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Robert J. Howatt
Executive Director
Delaware Public Service Commission
861 Silver Lake Boulevard
Cannon Building, Suite 100
Dover, DE 19904

Anthony J. DePrima
Executive Director
Delaware Sustainable Energy Utility
500 West Loockerman
Suite 400, Dover, DE 19904

Re: PSC Docket No. 14-193
Delmarva Power/Exelon Merger

Dear Messrs. DePrima and Howatt:

Enclosed please find a copy of a report entitled: "*SEU/Delmarva Power On-Bill Payment Service Report*" (the "OBPS Report"). Paragraph 98 of the Settlement Agreement in Docket No. 14-193 provides that Delmarva Power will evaluate the potential for providing an on-bill payment service ("OBPS") for the SEU with respect to potential loans made by the SEU to Delmarva Power customers for energy-efficiency or renewable-energy measures. Paragraph 98 further provides that Delmarva Power "will provide to the parties a report on its evaluation within 90 days of the close of the Merger..."

The OBPS Report is provided in compliance with paragraph 98 of the Settlement Agreement. Please do not hesitate to contact me if you have any questions.

Sincerely,

Todd L. Goodman

att.

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SEU/Delmarva Power
On-Bill Payment Service Evaluation Report

A. Introduction

On June 18, 2014, Exelon Corporation (“Exelon”), Pepco Holdings, Inc. (“PHI”), Delmarva Power & Light Company (“Delmarva Power”), and other related entities (collectively, the “Joint Applicants”) filed an application with the Delaware Public Service Commission (the “Commission”) seeking approval of a proposed merger of Exelon and PHI (the “Merger”) and the resulting change in control of Delmarva Power (PSC Docket No. 14-193). Pursuant to an Amended Settlement Agreement (the “Settlement Agreement”), the parties, including, but not limited to, Exelon, PHI, Delmarva Power, the Sustainable Energy Utility (“SEU”), Commission Staff (“Staff”) and the Division of the Public Advocate (“DPA”) reached agreement concerning the issues involved in the Docket. The Settlement Agreement was approved by the Commission in Order No. 8746 (June 2, 2015). On March 23, 2016, after all required approvals were obtained, the Merger was consummated.

Paragraph 98 of the Settlement Agreement provides that Delmarva Power will evaluate the potential for providing an on-bill payment service (“OBPS”) for the SEU with respect to potential loans made by the SEU to Delmarva Power customers for energy-efficiency or renewable-energy measures. Paragraph 98 of the Settlement Agreement further provides that Delmarva Power “will provide to the parties a report on its evaluation within 90 days of the close of the Merger...” (the “Report”).¹ This document constitutes the Report required by paragraph 98 of the Settlement Agreement.

¹ The text of Paragraph 98 of the Settlement Agreement is fully set forth as follows:

98. On Bill Payment for SEU Energy Efficiency and Renewable Energy Financing

- a. Delmarva Power will evaluate providing on-bill payment services, where agreed to by the customer, for the SEU to provide financing for customers' energy-efficiency or renewable-energy measures and collect its debt service through Delmarva Power monthly bills to participating customers. Such evaluation will be undertaken within the context of the law that directs the Advisory Council to recommend the adoption of an on-bill financing model, and accordingly,

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This Report addresses the issues set forth in Paragraph 98 of the Settlement Agreement. As noted throughout the Report, the evaluation is limited by the current lack of specifics concerning the detailed elements of a potential OBPS. Where practicable, Delmarva Power has attempted to outline OBPS issues that will need to be addressed should the specific elements of a proposed OBPS program be developed. Should the SEU wish to move forward to develop the necessary detailed specifications concerning a proposed OBPS, Delmarva Power is willing collaborate with the SEU to do so. Moving forward to develop a proposed OBPS program will entail significant effort and collaboration among Delmarva Power, the SEU, Commission Staff, DPA and the Energy Efficiency Advisory Council ("EEAC"). Commission approval of a proposed OBPS program would also be required.

Delmarva Power's evaluation shall focus on identifying and assessing implementation issues. The costs of the evaluation, or any billing undertaken as a result of this evaluation, shall not be recovered in rates.

- b. Delmarva Power will provide to the parties a report on its evaluation within 90 days of the close of the Merger in conjunction with the work of the Advisory Council. Prior to any program for on-bill payment services being implemented, the program will be submitted to the Commission for its approval.*
- c. If the program is implemented, Delmarva Power will be permitted to recover appropriate implementation costs and associated rates of return on capital costs through a program service fee paid by the SEU (including IT implementation costs as well as ongoing administrative costs) or other recovery method agreed upon that does not include recovery in rates.*
- d. The evaluation will include but not be limited to the following:*
 - i. Adjustments to Delmarva Power's billing systems and procedures so that customer bills would show charges for enrolled customers and Delmarva Power could collect the appropriate debt service (as indicated by the SEU) from a participating customer and transfer collected funds to the SEU (or its agent);*
 - ii. Allowing payment to be tied to the meter so that debt service transfers across successive property owners or tenants, or to the customer, depending on the program design adopted by the SEU;*
 - iii. Support for marketing of the program;*
 - iv. Adjustments to its tariff provisions to provide for this program through the SEU;*
 - v. Use of standard collection procedures or other approaches agreed upon by Delmarva Power, the SEU, Staff and the Public Advocate;*
 - vi. Development of a mechanism with the SEU, Staff and the Public Advocate for reasonable treatment of uncollected account balances and loan defaults such that such risk does not fall on Delmarva Power;*
 - vii. Establishing the SEU as program administrator, as the SEU will use its funding sources for loans, and adopt credit review criteria and program plans and criteria (eligible customers and measures, payment levels, contractor participation pre and post auditing, etc.) at SEU's discretion.*

This report is intended to convey general information regarding a potential on-bill payment system only and is not intended to, nor does it provide legal advice or opinions. The contents of this report should not be construed as, and should not be relied upon for, legal, regulatory or business advice in any circumstance. This report may not reflect the most current legal, regulatory or business developments. No action should be taken in reliance on the information contained in this report and Delmarva Power, its parents, affiliates, agents and employees disclaim all liability in respect to actions taken or not taken based on any of the contents of this report.

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Paragraph 98 of the Settlement Agreement provides that the Report will address the following issues:

1. The SEU would: (a) be the OBPS program administrator, (b) provide all funding for loans, and (c) adopt credit review criteria and program plans and criteria (eligible customers and measures, payment levels, contractor participation pre and post auditing, etc.),
2. Proposed standard collection procedures or other approaches and a proposed mechanism for treatment of uncollected account balances and loan defaults such that the risk does not fall on Delmarva Power (both of which would ultimately need to be agreed upon by Delmarva Power, the SEU, Staff and the Public Advocate),
3. The potential for having the debt service transfer to successive customers at the same service location (property owners or tenants) (*i.e., the debt would remain with the service address ("Premise"), and remain on Delmarva Power bills to successive customers at that Premise, even if the original SEU debtor no longer resides at or owns the Premise*),
4. Necessary adjustments to Delmarva Power's billing systems and procedures,
5. Tariff adjustments that would be needed to enable Delmarva Power to conduct an OBPS for the SEU,
6. All appropriate OBPS program costs and associated rates of return on capital costs would be recovered through a program service fee paid by the SEU,
7. Delmarva Powers's OBPS would be evaluated within the context of the EEAC process, and
8. How Delmarva Power would support marketing the OBPS program.

This Report addresses each issue in the sequence set forth above.²

² For organizational purposes, the Report addresses the issues in an order different than the order in which the issues were listed in paragraph 98 of the Settlement Agreement. (See, footnote 1 above for text of Paragraph 98 as it appears in the Settlement Agreement).

B. Issues Evaluated

1. The SEU as the OBPS Program Administrator

Paragraph 98(d)(vii) of the Settlement Agreement provides that the Report will assume that the SEU would:

- (a) Serve as the OBPS program administrator,
- (b) Provide all funding for loans, and
- (c) Adopt credit review criteria and program plans and criteria (eligible customers and measures, payment levels, contractor participation pre- and post- auditing, etc.) at SEU's discretion.³

A loan-based OBPS, where the SEU (a non-utility lender) would provide the capital for the loans and fully administer the lending process such that the utility acts solely as the billing and collection agent of the SEU, serves to remove at least one significant barrier – having the utility serve as a lender. Delmarva Power does not have the legal or regulatory authority to serve as a lender.⁴ Delmarva Power is also without the expertise or human resources necessary to comply with consumer lending laws and regulations.⁵ Having a third party (the SEU) serve as the administrator and lender is, therefore, a preferable model.

Under the proposed loan model, the SEU would handle the entire lending process, which includes, but is not limited to: establishing the lending program through qualifying customers, establishing payment schedules, and closing loans. The SEU would be responsible for compliance with all consumer lending laws and regulations. Delmarva Power's role would entail: (1) billing its customers who have executed loans with the SEU through a line item on monthly Delmarva Power bills, (2) receiving payments on the loans on behalf of the SEU, and (3) forwarding those payments to the SEU.

³ See footnote 1 for actual text of Paragraph 98(d)(vii).

⁴ See *On-Bill Financing for Energy Efficiency Improvements*, American Council for an Energy Efficient Economy, April 2012 (pp.2- 4).

⁵ *Id.*

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As stated in the Settlement Agreement, under the SEU's proposal, the SEU would also be responsible for all aspects of contractor participation and auditing of the improvements and the loan program. Delmarva Power would have no role in or responsibility related to: installation, construction, project selection, inspection, auditing, or any other aspect of the energy efficiency improvements for which the loans would be made.

Section 5 below, "Necessary Tariff Provisions," will address, in general terms, the basics of a potential contractual arrangement between the SEU and Delmarva Power and/or the general type of tariff provisions that would need to be approved by the Commission in order to enact an OBPS. Whether Commission approval of an OBPS could be achieved through a Commission approved contract, a tariff, or other mechanism, the documents would need to include detailed information concerning the roles and obligations of the SEU and Delmarva Power, including, but not limited to, assignment of responsibilities, liabilities and indemnification.

2. Billing and Collection Procedures - and -
Process for Uncollected Balances and Defaults

Paragraph 98(d)(v) of the Settlement Agreement provides that the Report will address the "[u]se of standard collection procedures or other approaches agreed upon by Delmarva Power, the SEU, Staff and the Public Advocate."⁶ Paragraph (98)(d)(vi) of the Settlement Agreement provides that the Report will address the "[d]evelopment of a mechanism with the SEU, Staff and the Public Advocate for reasonable treatment of uncollected account balances and loan defaults such that such risk does not fall on Delmarva Power."⁷ Because the issues of collection procedure, treatment of uncollected account balances, and loan defaults are interrelated, the issues are addressed under one section heading in this Report.

⁶ See Settlement Agreement paragraph 98(d)(v) at footnote 1 hereto.

⁷ See Settlement Agreement paragraph 98(d)(vi) at footnote 1 hereto.

a. Future Legal Analysis

An appropriate legal analysis cannot be performed without detailed facts concerning the potential OBPS program. Once a sufficiently detailed OBPS program is designed, a fact-specific thorough legal analysis of state and Federal laws and regulations related to consumer lending, credit and collections would need to be conducted. Due to the current lack of the specific elements of a proposed OBPS, a critical thorough analysis of laws that would apply to potential OBPS programs is beyond the scope of this Report.

The details concerning the specific role Delmarva Power would fulfill and the specific services it would perform for the SEU could have a significant impact upon Delmarva Power and a potential OBPS program. One example of a law that could have a profound impact upon potential OBPS operations is the Federal Fair Debt Collection Practices Act ("FDCPA").⁸ The FDCPA defines a *debt collector* as any business that regularly collects, or attempts to collect, consumer debts *owed to another institution*. If a business is a *debt collector* under the FDCPA, the business must comply with numerous requirements concerning, among other things: communications, disclosures, disputes, and penalties for non-compliance. A business is not a debt collector under the FDCPA if it is collecting a debt *owed to the business itself*. Accordingly, when Delmarva Power seeks to collect debts for electric and natural gas services owed to Delmarva Power, the FDCPA does not apply. Because Delmarva Power is not currently a *debt collector* under the FDCPA, its employees have not received the extensive training necessary for FDCPA compliance. Under an OBPS, however, Delmarva Power would be collecting debts owed to another institution - the SEU. Accordingly, to the extent the SEU wishes to move forward with the development of a potential OBPS, a thorough legal analysis of the FDCPA and other consumer lending and collection laws and regulations will need to be performed once the specific details of a proposed OBPS have been determined.

⁸ 15 U.S.C. §1692 *et. seq.*

b. Delmarva Power's Established Processes

Delmarva Power has established processes for addressing late payments, delinquencies and defaults, some of which are covered by Delaware statutes and many of which are regulated by the Commission.⁹ Although the details of an OBPS would need to be developed before Delmarva Power could make recommendations regarding specific proposed billing, collection and default procedures, Delmarva Power would prefer procedures that result in the least amount of change to its current established processes. By way of example, the following procedures should remain the same: the schedule and manner for providing late payment notices, the dunning process, late payment fees, and ultimately – termination for non-payment of Delmarva Power charges.

The benefits to making as few changes as possible to established billing, collection and default procedures include: less training costs for billing and collection employees, less programming costs to the system, and less potential for confusion among customers familiar with the current billing and collection procedures. In addition, the Staff of the Commission and the DPA are familiar with the current process. Finally, the process currently in place complies with Delaware laws and regulations.

c. Payment Posting Sequence

The payment posting sequence addresses how customer payments will be applied to various portions of Delmarva Power bills in the event the Customer remits a partial payment. The payment posting sequence is regulated by Delmarva Power's Electric Tariff at Second Revised Leaf No. 14, and provides that if the Customer remits a partial payment to Delmarva Power, the payment shall be applied in the following order:

⁹ Although an analysis of applicable laws, regulations and Tariff provisions is beyond the scope of this Report, several applicable or potentially applicable laws, regulations and Tariff provisions are addressed in this section and at other locations throughout this Report.

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1. Arrears for the Company's¹⁰ combined Electric Supply & Delivery Service or Delivery Service.
2. Arrears for the Company's Gas Utility Sales Service or Delivery Service, where applicable.
3. Arrears by vintage priority for Electric Supplier or Gas Supplier prior charges, where applicable. For an Electric Supplier's arrearage and a Gas Supplier's arrearage with the same vintage, the Electric Supplier's arrearage has priority over the Gas Supplier's arrearage.
4. Current charges for the Company's combined Electric Supply & Delivery Service or Delivery Service.
5. Current charges for the Company's Gas Utility Sales Service or Delivery Service, where applicable.
6. Current charges for Electric Supplier charges, where applicable.
7. Current charges for Gas Supplier charges, where applicable.

Paragraph 98(d)(vi) of the Settlement Agreement provides that a mechanism for the treatment of uncollected account balances and defaults will need to be developed with the SEU, Delmarva Power, Staff and the Public Advocate.¹¹ That Paragraph also provides that the risk of uncollected account balances and loan defaults must not fall on Delmarva Power.¹² Delmarva Power is currently involved in a Commission docket (Docket No. 15-1693), which concerns, among other issues, the potential adoption of a purchase of receivables program ("POR"). Under a POR, Delmarva Power would automatically purchase the accounts receivable of electric choice suppliers on a monthly basis.¹³ It appears that all parties in Docket No. 15-1693 (including Delmarva Power) support the adoption of a POR program. Assuming that a POR program will eventually be enacted, it would appear that the only position for OBPS within the posting sequence that would not place the risk of loan defaults upon Delmarva Power or its customers would be last in the sequence.

¹⁰ The term "Company" as used in the Tariff means Delmarva Power.

¹¹ See footnote 1.

¹² *Id.*

¹³ Although details of a POR will be established in the Commission docket, it is anticipated that the electric choice suppliers would be paid using a discount rate to account for uncollected balances, defaults and costs related to POR programming and O&M. Any balance in uncollectables or other POR program costs (either positive or negative) would be trued up annually through an adjustment in the POR discount rate.

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Pursuant to the Settlement Agreement, the actual payment posting sequence for an OBPS would need to be agreed upon by Delmarva Power, the SEU, Staff and DPA, and then approved by the Commission.¹⁴ A change/addition to the posting sequence within the Tariff would then be required to reflect the OBPS position in the payment posting sequence.

d. Late Payment Fees On SEU Loans

The SEU has not informed Delmarva Power whether, as part of a potential OBPS, it would want Delmarva Power to collect fees for late payments on SEU loans. Delmarva Power does not have enough information at this time for this Report to address whether Delmarva Power would (or under current law and/or regulations, could) collect any late charges related to late payments on SEU loans. Determining whether Delmarva Power could potentially collect late fees owed to the SEU as part of Delmarva Power's billing and collection procedures would require detailed facts concerning the proposed SEU loans themselves and any fees that the SEU might propose to have Delmarva Power collect. Once that information is developed, a thorough legal analysis of consumer lending and collection laws, would need to be conducted.

e. Termination of Service For Non-Payment of SEU Loans

Delaware regulated utilities (electric, water, sewer, etc.) have the ability to terminate service for non-payment of services provided by the utilities. Although discussions between the SEU and Delmarva Power have not suggested that the SEU would seek to have Delmarva Power terminate service to a customer for failure to make payments on an SEU loan, that issue is addressed below.

Delmarva Power's Electric Tariff contains numerous provisions relating to billing and collection.¹⁵ There are rules and regulations in the Delaware Administrative Code that relate to

¹⁴ See Settlement Agreement paragraph 98 b v at footnote 1.

¹⁵ For example, see Delmarva Power's Electric Tariff at Second Revised Leaf Nos. 12-16, 31-32.

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collection procedures,¹⁶ as well as Delaware statutes that govern aspects of the billing and collection process.¹⁷ Moreover, Delmarva Power has numerous internal billing and collection policies and procedures that it has developed over time, all of which are consistent with the various applicable Tariff provisions, regulations and statutes.

Current provisions of the Delaware Code (26 Del. C. §§ 117 and 118 - *standing alone – without the Tariff provisions*) could be interpreted to mean that public utilities may only terminate service to their customers for failure to pay for a service provided to the customer by the utility.¹⁸ Regardless of one's interpretation of §§ 117 and 118, however, the Commission has adopted Tariff provisions which provide that Delmarva Power may only terminate service for non-payment for services provided by Delmarva Power itself. Pursuant to its Tariff, Delmarva Power may terminate service for non-payment of only the following: (1) any bill for electric Delivery Service or combined Electric Supply & Delivery Service,¹⁹ (2) a required deposit,²⁰ or (3) service installation costs.²¹ As such, Delmarva Power does not have legal or regulatory authority to terminate service to a customer for non-payment on a potential SEU loan pursuant to an OBPS.

Obtaining authority to terminate service to a customer for non-payment of a potential SEU loan would require, at least, regulatory proceedings to modify the termination provisions of Delmarva Power's Tariff. Legislative changes to §§ 117 and 118 might also be required. Pursuant to the Settlement Agreement, before legislative or tariff changes could be pursued, agreement to pursue such changes would need to be reached among Delmarva Power, the SEU, Staff and DPA.²² The significant legal/regulatory effort that would need to be undertaken to

¹⁶ For example, see 26 Del. Admin. C. § 3002 *et seq.*

¹⁷ For example, see 26 Del.C. §§ 117 - 118.

¹⁸ See 26 Del. C. § 117 (b) (1) ("No person who engages in the distribution and sale of gas, water, wastewater, or electricity . . . shall discontinue service or sale thereof due to nonpayment of past charges for such service or sale . . . without at least 72 hours' notice to said occupants). See also, 26 Del. C. § 118 (a) and (b).

¹⁹ Delmarva Power's Electric Tariff at § XV(A)(2)(b).

²⁰ *Id.* at § XV(A)(2)(d).

²¹ *Id.* at § XV(A)(2)(g).

²² See Settlement Agreement paragraph 98(d)(v) at footnote 1 hereto.

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enable Delmarva Power to terminate service for failure to make payments on an SEU loan suggests that, for those reasons alone, a potential OBPS in Delaware should not include termination of electric service for failure to remain current on an SEU loan.

From a policy perspective, Delmarva Power is uncomfortable with the concept of terminating electric distribution service for failure to make payments on an SEU loan. If a customer remains current on charges for services provided by Delmarva Power, the customer deserves to continue to receive those services. Delmarva Power does not believe that it should terminate its services to a customer due solely to a customer's failure to pay for an obligation owed to a third party lender. Although new windows, a new furnace, insulation or a photovoltaic system installed pursuant to a home improvement-type loan may serve to reduce a customer's overall utility bill, Delmarva Power does not see a sufficient nexus between the loan and utility service to justify the termination of utility service solely because the customer has not remained current on home improvement loan payments. There are multiple well-established mechanisms available for securing consumer home improvement-type loans that would not involve the termination of electric service. Delmarva Power believes that those mechanisms should be used to secure payments.

Oregon provides one example of an OBPS that does not involve the termination of electricity service for failure to make payments on energy efficiency home improvement loans for which the utility is acting as billing agent.²³ Pursuant to the Oregon OBPS, if the loan payment is more than ninety (90) calendar days past due, the utility will: remove the Customer from the OBPS, inform the lender that the customer is in default on the loan, and have no further obligation to bill loan repayments to that customer.²⁴

²³ See Tariff for *On-Bill Repayment Service program*, Portland General Electric Company, P.U.C. Oregon No. E-18, First Rev. at Sheet No. 341-2.

²⁴ *Id.*

3. Tying Loan Debt and Billing Payment
Responsibility to the Service Address (Premise)

Paragraph 98(d)(ii) of the Settlement Agreement provides that the Report will address “[a]llowing payment to be tied to the [premise] so that debt service transfers across successive property owners or tenants, or to the customer, depending on the program design adopted by the SEU.”²⁵ Delmarva Power interprets the issue as follows: *whether Delmarva Power can continue to include, in the monthly Delmarva Power bill, amounts due on an SEU home improvement loan even if the customer who borrowed the funds from the SEU is no longer the customer of record at the premise?*”

This report does not address what the SEU must do to perfect a security interest in the property where the improvements funded by the loan are made. The real property and lending law issues that must be addressed to answer that issue are beyond the scope of this Report. For purposes of this section, Delmarva Power will use the following customer scenario:

Delmarva Power electric customer John Doe resides at and is the owner of record of Premise A. John Doe enters into a 10 year loan with the SEU, the proceeds of which are used to install a rooftop photovoltaic system on Premise A. All appropriate paperwork is executed that enables Delmarva Power to legally serve as the billing agent for the SEU and include in Mr. Doe’s Delmarva Power electric bills the monthly loan amount owed to the SEU.²⁶ Mr. Doe pays his monthly Delmarva Power bill, including the separately identified monthly SEU loan amount on time and in full for 2 years. Mr. Doe then sells Premise A to Jane Roe. The photovoltaic system remains on the roof of Premise A and is now owned by Ms. Roe.

²⁵ See Settlement Agreement paragraph 98(d)(ii) at footnote 1 hereto. The language of paragraph 98(d)(ii) provides that the payment will be “tied to the meter...” Meters can be moved to different locations or replaced. Accordingly, Delmarva Power believes that the SEU wishes to tie the obligation to the premise (or property) where the improvements funded by the SEU loan are installed.

²⁶ This scenario further assumes that all necessary tariffs, regulations, contracts and modifications to any existing laws necessary to enable an OBPS are in place – and that Mr. Doe has provided Delmarva Power with written authority to include the monthly amount owed to the SEU in his Delmarva Power bill and to share billing and payment information with the SEU.

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Upon the sale of Premise A to Ms. Roe, Mr. Doe cancels his Delmarva Power account (which was paid in full at the time of the sale to Ms. Roe) and Ms. Roe opens a new Delmarva Power account in her name.

Under the factual scenario set forth above, can Delmarva Power include the monthly balance owed on the SEU loan on the monthly bills of Ms. Roe for the next 8 years?

Assuming that Ms. Roe has not formally assumed the obligation to pay the loan formerly owed by Mr. Doe, then as the law and regulations currently exist, Delmarva Power is not aware of any authority that would allow it to place the remaining amount owed to the SEU on the monthly bills of Ms. Roe. Delmarva Power has the right to bill customers for the service provided to customers by *Delmarva Power*, but Delmarva Power does not have the right to bill the amounts previously consented to by Mr. Doe to the account of Mr. Roe.

A legal analysis of legislation and regulations that would need to be adopted in order to cause an OBPS loan obligation to transfer from customer to customer is beyond the scope of this Report. At least one state, New York, has enacted legislation that, with appropriate recordation, allows OBPS loan obligations to transfer automatically to subsequent owners of a premise.²⁷

²⁷ See *On-Bill Recovery Financing Program Frequently Asked Questions*, New York State Energy Research and Development (accessed Jun. 15, 2016), <http://www.nysrerda.ny.gov/All-Programs/Programs/On-Bill-Recovery-Financing-Program/FAQ> (stating that the homeowner/borrower must execute a “declaration” that is recorded in similar fashion as a mortgage in order to provide future purchasers with notice of the obligation to make on bill payments under the loan transaction). See also, NY Public Authorities Laws § 1896(5)(a)-(b).

(a) For each loan issued for qualified energy efficiency services that is to be repaid through an on-bill recovery mechanism, the New York state energy research and development authority shall record . . . in the office of the appropriate recording officer, a declaration with respect to the property improved by such services of the existence of the loan and stating the total amount of the loan, the term of the loan, and that the loan is being repaid through a charge on an electric or gas meter associated with the property. The declaration shall further state that it is being filed pursuant to this section and, unless fully satisfied prior to sale or transfer of the property, the loan repayment utility meter charge shall survive changes in ownership, tenancy, or meter account responsibility and, until fully satisfied, shall constitute the obligation of the person responsible for the meter account. Such declaration shall not constitute a mortgage and shall not create any security interest or lien on the property. Upon satisfaction of the

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Alternatively, the Oregon Public Utility Commission has adopted a tariff-based OBPS program where the loan obligation does not automatically transfer to a subsequent property owner upon the sale of the property, instead, the loan will transfer only upon written consent of the new owner.²⁸ It appears that a mechanism similar to the one used in Oregon might not require adoption of legislation in Delaware.

4. Adjustments to Delmarva Power's Billing Systems and Procedures

Paragraph 98(d)(i) of the Settlement Agreement provides that the Report will include estimated adjustments to Delmarva Power's billing systems and procedures necessary to implement a potential OBPS.²⁹ Delmarva Power has performed a preliminary analysis of the billing system components that would need to be developed to support an OBPS, based upon the general elements of a proposed OBPS that have been provided by the SEU to date. A high level description and cost estimate is provided below.

All estimates, descriptions, suggestions, conclusions, and information contained below (and throughout this Report) are preliminary and based upon the limited information Delmarva Power has concerning the specific details of a potential OBPS program. In order to provide

loan, the authority shall file a declaration of repayment pursuant to article nine of the real property law.

(b) The recording officer shall record such declarations in the same book, provided under section three hundred fifteen of the real property law, in which such recording officer records deeds.

²⁸ See Tariff for On-Bill Repayment Service program, Portland General Electric Company, P.U.C. Oregon No. E-18, First Rev. at Sheet No. 341-2:

6. ...if the Customer sells the property, the loan will revert to Energy Trust, and/or the third party with which Energy Trust contracts. Energy Trust may work with the new owner to continue the repayment obligation; if the new owner is willing to continue the loan repayment obligation, the Energy Trust and [the utility] will treat this as a new loan.

²⁹ See Settlement Agreement paragraph 98(d)(i) at footnote 1 hereto.

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more accurate descriptions of work and more reliable cost estimates, Delmarva Power would need to know the detailed specifications concerning all elements of an actual OBPS that would be put into effect. The estimate contained in this section includes only initial work on the billing system. No other costs, such as, but not limited to, consumer education/marketing, legal, regulatory, employee training, ongoing system operations and management, etc. are included in this preliminary estimate. The assumptions upon which the estimate is based are as follows:

- a. Delmarva Power and SEU will work to develop a methodology for the SEU to provide customer enrollment information to Delmarva Power. It will need to be determined if the SEU will provide the total dollars and number of months for the payment arrangement (or installment plan), or if the SEU will provide a monthly file with the monthly amount. For estimating purposes, Delmarva Power has assumed it will provide a secure portal for the SEU to log on to and upload a file. File information would include customer's account, the total dollars and the number of months. The SEU would need to imbed the interest amount in the total dollars provided to Delmarva Power. A specific customer account could only have one active SEU finance arrangement on the bill at a time.
- b. Prior to establishing an OBPS charge, Delmarva Power's billing system must be configured with the appropriate accounting to identify these charges.
- c. Delmarva Power's billing system has the flexibility to allow a finance charge on unpaid, invoice balances. If it is desired to have this flexibility, an additional field will be provided in the secure portal upload file so that the SEU can identify whether a finance charge should apply. The finance charge would be an agreed upon percentage and the same for all customers using this program.
- d. After performing validation and testing, Delmarva Power would place the total loan charge on the customer's account and establish a set monthly

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amount to be paid by the customer for the number of months specified in the file ("installment plan"). Delmarva Power will evaluate whether this will be done programmatically or whether a trigger will be created for the business to establish the installment plan.

- e. Delmarva Power's bill format will require changes to identify this charge as a separate line item on the bill. It is anticipated that this charge would appear in a separate section of the bill that would follow the Delivery and Supply sections. In the event it is determined that a Delaware OBPS would not require Customers to participate exclusively through an auto pay program, then Delmarva Power's printed bills will also require the above mentioned formatting changes.³⁰
- f. For purposes of this section, Delmarva Power is assuming that an OBPS would follow the current Tariff rules, including, but not limited to, those defined in the Delaware Electric Tariff, section V Payment Terms (Leaf No. 14), as well as the payment posting sequence discussed above.
- g. For purposes of this section, Delmarva Power assumes that it would not be entitled to terminate service due solely to a customer's failure to pay for the monthly loan payment obligation owed to the SEU.
- h. Delmarva Power would need to develop a new monthly report to identify the payments applied to these charges, in order to facilitate payment to the SEU.
- i. Delmarva Power will need to develop a report to provide to the SEU for purposes of informing the SEU when accounts on this program final bill (when the final bill has been issued).
- j. Transfers to subsequent customers:

³⁰ See Report Section 5 below for an overview of the Oregon OBPS, which requires OBPS customers to enroll in an auto pay program in which the Customer's electricity bill is automatically paid from the Customer's bank account when due. An auto pay prerequisite would mean that an OBPS customer would need to enroll in Delmarva Power's auto pay program prior to adding SEU loan repayments to the customer's Delmarva Power bills.

- (1) In the event that a subsequent customer will continue making payments on a balance of an SEU loan established by a preceding customer, the Delmarva Power billing system work necessary to achieve the transfer would be done manually by Delmarva Power. Delmarva Power assumes that the SEU would handle all negotiations and communications with the new customer regarding the terms and conditions of the loan and would handle all necessary paperwork with the customer, including, but not limited to, obtaining all written consents needed by Delmarva Power. An alternative to consider would be to have the SEU enroll the new customer's account into the OBPS with the remaining balance as if it were a new SEU loan.
 - (2) If it is determined that balances will not be collected through a subsequent customer's account, Delmarva Power would manually remove the loan repayment charge from its system and notify the SEU of the action. The SEU would then be responsible for all further collections on the loan.
- k. In the event that a customer fails to make payments on the SEU loan, Delmarva Power would manually remove the loan repayment charge from its system and notify the SEU of the action. The SEU would then be responsible for all further collections on the loan.

Delmarva Power's preliminary estimate for the initial cost of this billing system work is approximately **\$350,000**.³¹ It is further estimated that the work would take approximately six to nine months to complete once all detailed specifications concerning an actual OBPS have been finalized.

³¹ This number is an estimate of costs only. It does not include any return that Delmarva Power would be entitled to under the terms of the Settlement Agreement. See Settlement Agreement paragraph 98(c) at footnote 1 hereto.

5. Necessary Tariff Provisions

Paragraph 98(d)(iv) of the Settlement Agreement provides that the Report will address potential adjustments to tariff provisions to provide for an OBPS.³² In order to implement an OBPS, Commission approval to do so would be required. Without the specific details of an actual OBPS, however, it is not possible to identify what tariff provisions, if any, would need to be adopted to enact an OBPS. In Delaware, some utility programs are adopted through tariff provisions. Others, however, are adopted through: a Commission order approving detailed program plans, by Commission approval of contracts or through a combination of mechanisms. Whether a proposed OBPS would be approved through tariff, order, approved contract or a combination of mechanisms, the documents would need to include detailed information concerning the roles and obligations of customers, the SEU and Delmarva Power, including, *inter alia*: assignment of responsibilities, liabilities, indemnification, reimbursement for costs, defaults, rights and obligations of customers, regulatory review, and numerous other issues that cannot be identified without knowing the specific elements of the particular OBPS. Delmarva Power emphasizes that it would be important to work collaboratively with Commission Staff and the Public Advocate, both in developing the elements of a proposed OBPS and in determining the mechanism(s) that should be used to present the OBPS to the Commission for its review and potential approval.

By way of one example, the Oregon Public Utility Commission has approved a tariff (with supporting contract) for an OBPS. The Oregon Tariff contains the outline of an OBPS program that would appear to require little, if any legislation in Delaware.³³ The most noteworthy elements of the Oregon OBPS Tariff are summarized as follows:

- *On-Bill Repayment Service that allows customers with energy efficiency upgrade loans supplied by Energy Trust of Oregon to repay loan through their utility bill;*

³² See Settlement Agreement paragraph 98 (d)(iv) at footnote 1 hereto.

³³ See Tariff for *On-Bill Repayment Service program*, Portland General Electric Company, P.U.C. Oregon No. E-18, First Rev. at Sheet Nos. 341-2 thru 341-4.

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- *Utility will bill repayment of the loan on the Customer's electricity bill and then remit the payments received to Energy Trust;*
- *Energy Trust shall qualify Customers for the loan and repayment service and establish a contract with the Customer for repaying the loan;*
- *Energy Trust will provide the utility with Customer's written authorization to include loan repayments on Customer's bill and share account payment history and credit activity with Energy Trust;*
- *Utility will not disconnect a Customer's service for non-payment of the loan repayment amount;*
- *Loan payments are last in the posting sequence;*
- *If the loan payment is more than ninety (90) calendar days past due, the utility will remove the Customer from the On-Bill Repayment Service and have no further obligation to bill loan repayments;*
- *If the Customer sells the property, the loan will revert to Energy Trust. If the new owner is willing to continue the loan repayment obligation, the Energy Trust and utility will treat this as a new loan. Repayment amounts may not be included on the bill for the new owner of the premises without first receiving the following in writing:*
 - *notification from Energy Trust that new Customer at the premises has established a contract for repayment of the payment obligation,*
 - *authorization from the new owner of the premises to include repayment amounts on utility bills, and*
 - *authorization from the new Customer's to share account payment history and credit activity with the Energy Trust.*
- *Energy Trust will reimburse utility Company for all costs related to OBPS. Utility will bill Energy Trust for all OBPS costs. Incremental OBPS costs will not be recovered from Customers;*
- *Relationship between Energy Trust and utility will be governed by an OBPS contract;*

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- *Customer agrees to hold utility harmless from all acts or omissions of Energy Trust and from any action the utility may take in reliance on information provided by Energy Trust or associated financing institutions.*
- *OBPS Customers must participate in the utility's auto pay program in which the Customer's electricity bill is automatically paid from the Customer's bank account when due.*

The combined tariff/contract OBPS mechanism used in Oregon may represent a reasonable potential model for Delaware.

6. Recovery of OBPS Costs
Through an SEU Service Fee

Paragraph 98(c) of the Settlement Agreement provides: “[i]f the program is implemented, Delmarva Power will be permitted to recover appropriate implementation costs and associated rates of return on capital costs through a program service fee paid by the SEU (including IT implementation costs as well as ongoing administrative costs). . . .”³⁴ There may be multiple “service fee” mechanisms through which the SEU could reimburse Delmarva Power for the costs and associated rates of return arising out of an OBPS. The exact manner that the SEU would reimburse Delmarva Power for costs arising out of a proposed OBPS would need to be determined through agreement between Delmarva Power and the SEU. In Oregon, for example, the OBPS Tariff states that Energy Trust is responsible for all program costs and provides that the payment details will be agreed to in a contract between Energy Trust and the utility. Without knowing the details of what a potential OBPS in Delaware would entail, it is not possible to know what form the recovery mechanism would take. That issue should be one that Delmarva Power and the SEU could quickly reach mutual agreement on.

³⁴ See Settlement Agreement paragraph 98(c) at footnote 1 hereto.

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7. The Energy Efficiency Advisory Council

Paragraph 98(a) of the Settlement Agreement provides that Delmarva Power's evaluation of a potential OBPS will be conducted "within the context of" the EEAC process.³⁵

Amendments to the Delaware Energy Act adopted in 2014 provide that an EEAC will be established to assist utilities with the development of, and to eventually recommend, "candidate energy efficiency, and reduction, and emission-reducing fuel-switching program elements that are cost-effective, reliable, and feasible, including financing mechanisms...."³⁶ The EEAC is tasked with evaluating the potential for an OBPS, as well as other potential financing mechanisms.³⁷

By including the language in paragraph 98(a) that requires Delmarva Power's OBPS to be evaluated "within the context of" the EEAC process, a potential OBPS must be assessed and recommended through the EEAC framework. Both Delmarva Power and the SEU are active members of the EEAC. Staff and DPA have also attended the EEAC meetings. The EEAC has been meeting for over a year and, barring a change in legislation, will continue to evaluate and recommend energy efficiency programs through ongoing three-year program portfolios.³⁸ Delmarva Power and the SEU will need to jointly consider how and when the issue of an OBPS should be brought before the EEAC for evaluation, which would include collaboration with Staff and DPA.³⁹

Throughout this document, Delmarva Power has discussed the fact that this Report addresses OBPS issues based upon the limited facts known to Delmarva Power at this time and that detailed specifications concerning the elements of a proposed OBPS program would need to be developed in order to provide further necessary in depth evaluation. The EEAC would also

³⁵ See Settlement Agreement paragraph 98(a) at footnote 1.

³⁶ 29 Del C. §§ 8059 (h) (1)(a)-(b).

³⁷ 29 Del C. § 8059 (h)(1)(a).

³⁸ 29 Del C. § 8059(h)(1)(b).

³⁹ *Id.*

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need to have the same detailed specifications concerning the elements of a proposed OBPS before it could fully evaluate and potentially recommend an OBPS to the Commission for adoption by regulated utilities. To the extent that the SEU wishes to move forward with Delmarva Power to address those detailed specifications for submission to the EEAC, Delmarva Power looks forward to doing so.

8. Delmarva Power Support for
Marketing of an OBPS Program

Paragraph 98(d)(iii) of the Settlement Agreement provides that the Report will address how Delmarva Power would support marketing of an OBPS program.⁴⁰ The 2014 amendments to the Delaware Energy Act provide:

*The [utilities] and the Sustainable Energy Utility shall collaborate to promote available energy efficiency and peak demand reduction programs through a common marketing platform provided by the SEU, which shall serve as an easily accessible resource for all residents of Delaware seeking to save money through energy efficiency.*⁴¹

The 2014 Amendments require the utilities and the SEU to “collaborate” to promote various EEAC recommended and Commission approved programs.⁴² The EEAC energy efficiency program development process is underway, with a goal to complete development and recommendations for the first three-year program portfolios in early 2017. No EEAC programs have been recommended yet and, other than the SEU’s current website, a “common marketing platform provided by the SEU” has not yet been identified by the EEAC.⁴³ Because the EEAC has not yet reached the point in its process where marketing of programs has been addressed, the EEAC members (which include Delmarva Power, the SEU and the other Delaware utilities) have not yet collaborated on what the marketing campaign for the various programs will consist of. It

⁴⁰ See Settlement Agreement paragraph 98(d)(iii) at footnote 1.

⁴¹ 29 Del C. §§8059(h)(1)(g).

⁴² *Id.*

⁴³ *See Id.*

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would, therefore, be premature at this point for Delmarva Power to develop a marketing plan to support a potential SEU OBPS, or any other program currently undergoing EEAC review.

Although there are no EEAC programs or an OBPS to market at this time, the SEU and Delmarva Power have already collaborated to help market existing SEU programs. Delmarva Power has supported the SEU's Energize Delaware program using several tactics. Delmarva Power worked with the SEU to develop and execute the following marketing efforts:

1. In December 2015, Delmarva Power included an "Energize Delaware" Bill Insert, developed by the SEU, in Delmarva Power electric bills sent to all 300,000 + of its Delaware Customers. Delmarva Power also placed an electronic copy of that bill insert on its website, which is available at the following link:
http://www.delmarva.com/uploadedFiles/wwwdelmarvacom/Content/Page_Content/My_Home/DPL%20DE_HPwES_Bill_Insert_DEC%202015_12.01.2015.pdf
2. Delmarva Power added information about the SEU's "Energize Delaware" and specifically, the SEU's Home Performance program, on Delmarva.com
<http://www.delmarva.com/Energize-Delaware.aspx>
Delmarva Power's webpage also contains links to the SEU's "Energize Delaware" website.
3. In 2015 and 2016, Delmarva Power utilized its social media resources (Twitter and Facebook) to support the SEU:

Table 1: “Energize Delaware” Social Media Engagement

Platform	Engagement Type	Date	Time
Twitter	Quote Tweet	05/16/16	3:54 pm
Twitter	Quote Tweet	05/03/16	12:30 pm
Twitter	Retweet	04/28/16	10:03 am
Twitter	Retweet	04/20/16	12:55 pm
Twitter	Retweet	12/22/15	10:04 am
Twitter	Retweet	12/18/15	10:04 am
Twitter	Retweet	12/10/15	4:46 pm
Twitter	Retweet	12/07/15	10:04 am
Facebook	Shared Post w/ comment	05/16/16	4:17 pm
Facebook	Shared Post w/ comment	05/03/16	3:26 pm

Delmarva Power will collaborate with the SEU, both as part of the EEAC process and independently, to help steer Delmarva Power customers who might be interested in an OBPS (or other SEU-offered programs) to what will be developed as “a common marketing platform provided by the SEU.”⁴⁴ Delmarva Power’s marketing efforts could be conducted through many potential mechanisms, including, but not limited to: bill inserts, internet and website advertising, links to the SEU website, social media and other methods. Delmarva Power will work with the SEU, other utilities and the EEAC to support marketing of all programs recommended by the EEAC and approved by the Commission.

C. Conclusion

In the preceding OBPS evaluation Report, Delmarva Power addressed the issues set forth in the Settlement Agreement. As noted throughout the Report, the evaluation is limited by the present lack of specifics concerning the elements of a proposed OBPS. Where practicable, Delmarva Power has attempted to outline OBPS issues that will need to be addressed should the specific elements of a proposed OBPS program be developed. To the extent that the SEU wishes

⁴⁴ *Id.*

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to develop detailed specifications concerning a proposed OBPS, Delmarva Power is willing to work collaboratively with the SEU, Commission Staff, DPA and the EEAC to do so.